

## Creating offense for abandoning or endangering an elderly or disabled person

SB 827 by Whitmire (Keel)

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**DIGEST:** SB 827 would have expanded the criminal offense for intentional abandonment of a child to include abandonment of an elderly or disabled person. It would have made it a second-degree felony (punishable by two to 20 years in prison and an optional fine of up to \$10,000) intentionally or knowingly to fail to provide food, medical care, or shelter to a child or an elderly or disabled person.

The bill would have established a defense to prosecution for intentional abandonment of a child if the child were delivered to a designated emergency infant-care provider. It would have provided a defense to prosecution for failure to provide food, medical care, or shelter by a health-care facility, its employees, or a licensed health-care professional if the failure resulted from: a decision to withhold or withdraw life-sustaining treatment from a terminal or irreversible patient; power of attorney; consent to medical treatment of a minor; consent for emergency care; and other decisions. It would have created an affirmative defense to prosecution for failure to provide medical care if the decision were based on treatment in accordance with a recognized religious method of healing with a generally accepted record of efficacy.

**GOVERNOR'S REASON FOR VETO:** "I support the intent of Senate Bill No. 827 to provide added protections to individuals who are elderly or disabled. However, the bill's flawed language has the unintended consequence of holding hospitals and hospital staff criminally liable for carrying out a patient's advanced directive to withhold lifesaving treatment. The bill would have provided a defense to prosecution if medical care or food is withheld based on an advanced directive or living will. However, the defense did not extend to hospitals or their personnel."

**RESPONSE:** Sen. John Whitmire, author of SB 827, said: "While there was significant support for this bill, there was an inadvertent error in the proposed legislation that came out of the House committee. I hope to refile similar legislation in the special session."

Rep. Terry Keel, the House sponsor, said: "The allegation that the language was flawed is untrue. Criminally negligent culpability for intentionally or knowingly failing to provide food, medical care, or shelter was eliminated in committee. The claim that the bill had unintended consequences is unfounded."

**NOTES:** The companion bill, HB 1426 by Keel, was analyzed in Part Two of the May 26 *Daily Floor Report*.